

REMARKS

Claims 24-31 are pending in the application.

Claims 24-31 have been rejected.

Claims 24, 25 and 30 have been amended, as set forth herein.

Claims 26 and 31 have been canceled, without prejudice.

New Claims 32-40 have been added.

I. **INFORMATION DISCLOSURE STATEMENT FILED NOVEMBER 24, 2003**

The Office Action objects to that portion of the information disclosure statement (IDS) relating to a German patent DE 3145153. This German patent was cited in the International Search Report (and a copy thereof was received) issued in a corresponding PCT application. A copy of the International Search Report and DE 3145153 was included with the submitted IDS. Applicant has readily obtained an English translation of the abstract of DE 3145153 and is providing a copy herewith of the English-translated Abstract.

The relevance of DE 3145153 as presently understood by the undersigned counsel is that this reference was cited in the International Search Report (and previously submitted) from a corresponding PCT application.

II. CLAIM OBJECTION

Claim 30 was objected to based upon an informality. Applicant has amended Claim 30. Accordingly, the Applicant respectfully requests withdrawal of this objection.

III. REJECTION UNDER 35 U.S.C. § 102

Claims 24-28 were rejected under 35 U.S.C. § 102(b) as being anticipated by Weatherby (US 54,124,983). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Claim 24 has been amended to recite that the rod shaft is comprised of composite material and is of unitary construction. (emphasis added). Applicant has amended dependent Claim 24 to recite that the composite material is fiber reinforced plastic. (emphasis added).

Applicant respectfully submits that the tieback of Weatherby is not of unitary construction and comprising composite material (independent Claim 24) and not comprised of fiber reinforced plastic (dependent Claim 25). In fact, the tieback of Weatherby is of non-unitary construction having a steel tendon with a coating of electrostatically applied epoxy resin. See, Col. 3, lines 23-62.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(b) rejection of Claims 24-28.

IV. REJECTION UNDER 35 U.S.C. § 103

Claims 29-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Weatherby (Us 4,124,983) in view of Taylor, et al. (US 6,024,516). Claim 31 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Weatherby (Us 4,124,983) in view of Hall, et al. (US 6,264,403). The rejections are respectfully traversed.

Applicant has canceled Claim 31, without prejudice.

Applicant has amended independent Claim 24 from which Claims 29-30 depend. For the reasons set forth above in response to the 102 rejection over Weatherby, none of the references either alone or in combination disclose, teach or suggest the Applicant's invention, as claimed.

Accordingly, the Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 29-31.

V. NEW CLAIMS 32-40

New Claims 32-40 have been added. New independent Claim 32 (rod shaft is of unitary construction and constructed of fiber reinforced plastic composite material) and new independent Claim 34 (a portion of the tieback rod being fiber reinforced plastic composite material) include

elements/features not disclosed in Weatherby, or taught or suggested by Weatherby or the other references.

VI. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Davis Munck Deposit Account No. 50-0208.

Respectfully submitted,

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Date: 5/24/2004


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PCT

INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference DB001016-003	FOR FURTHER ACTION see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.	
International application No. PCT/US 03/ 21876	International filing date (day/month/year) 14/07/2003	(Earliest) Priority Date (day/month/year) 19/07/2002
Applicant CREATIVE PULTRUSIONS, INC.		

This International Search Report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This International Search Report consists of a total of 6 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

1. Basis of the report

a. With regard to the **language**, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international search was carried out on the basis of the sequence listing :

☐ contained in the international application in written form.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority in written form.

☐ furnished subsequently to this Authority in computer readable form.

☐ the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.

☐ the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished

2. ☐ **Certain claims were found unsearchable** (See Box I).

3. ☐ **Unity of invention is lacking** (see Box II).

4. With regard to the **title**,

☒ the text is approved as submitted by the applicant.

☐ the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☐ the text is approved as submitted by the applicant.

☒ the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. The figure of the **drawings** to be published with the abstract is Figure No.

☐ as suggested by the applicant.

☐ because the applicant failed to suggest a figure.

☒ because this figure better characterizes the invention.

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☐ None of the figures.

INTERNATIONAL SEARCH REPORT

International application No.

PCT/US 03/ 21876

Box III TEXT OF THE ABSTRACT (Continuation of item 5 of the first sheet)

The present invention relates generally to a wale for use in bracing a retaining wall. The wale (10) is comprise of a back wall (12), a front wall (14) having a channel (18) formed therein, and a plurality of connecting walls (22, 24, 26, 28) connecting the back and front walls to form at least one chamber between the back and front walls. In one embodiment, the wale is of unitary construction and the plurality of connecting walls includes top and bottom walls which form a single chamber between the back and front walls. In an alternative embodiment, the wale is of a unitary construction and the plurality of connecting walls includes a top, upper reinforcing, lower reinforcing, and bottom walls, which form a plurality of chambers between the back and front walls. The wale may by made of a pultruded composite material such as a fiberglass reinforced plastic (FRP) resin impregnated composite. A seawall system using such a wale is also described.

INTERNATIONAL SEARCH REPORT

Int: onal Application No

PCT/US 03/21876

A. CLASSIFICATION OF SUBJECT MATTER

IPC 7 E02D5/76 E02D5/16 E02B3/06

According to International Patent Classification (IPC) or to both national classification and IPC

B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

IPC 7 E02D E02B

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practical, search terms used)

EPO-Internal, WPI Data

C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	US 5 285 612 A (JOHNSON DAVID W) 15 February 1994 (1994-02-15) abstract; figure 1	1-7
Y	Claim 8 : variant with pultruded member	8,10,11, 13,16,18 14
A	---	
X	GB 2 278 902 A (MILLFIELD ENTERPRISES LIMITED) 14 December 1994 (1994-12-14) abstract; figure 1	24-27
Y	Claim 8 : variant with pultruded tieback rod	8,10,12, 16,18-20
A	---	
A	DE 31 45 153 A (ROECHLING HAREN KG) 30 June 1983 (1983-06-30) abstract; figure 3	26

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☒ Further documents are listed in the continuation of box C.☒ Patent family members are listed in annex.

* Special categories of cited documents :

- *A* document defining the general state of the art which is not considered to be of particular relevance
- *E* earlier document but published on or after the international filing date
- *L* document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- *O* document referring to an oral disclosure, use, exhibition or other means
- *P* document published prior to the international filing date but later than the priority date claimed

T later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

X document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

Y document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art.

G document member of the same patent family

Date of the actual completion of the international search

7 November 2003

Date of mailing of the international search report

13/11/2003

Name and mailing address of the ISA

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INTERNATIONAL SEARCH REPORT

International Application No

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C.(Continuation) DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
Y	US 3 739 588 A (SCHROTER R ET AL) 19 June 1973 (1973-06-19) Claim 8 : variant with pultruded tieback rod ----	8,10,12, 16,18-20
Y	US 4 690 588 A (BERGER LAWRENCE E) 1 September 1987 (1987-09-01) cited in the application Claim 8 : variant with pultruded member column 4, line 17 -column 7, line 62; figures 1,2,4,5,10 ----	8,10,11, 13,16,18
A	-----	9
A	US 5 584 610 A (SIMPSON GARLAND E ET AL) 17 December 1996 (1996-12-17) figure 5 ----	22,23
A	GB 2 356 884 A (KELLER LTD) 6 June 2001 (2001-06-06) page 2, line 9 - line 18; figure 1 -----	8

FURTHER INFORMATION CONTINUED FROM PCT/ISA/ 210

This International Searching Authority found multiple (groups of) inventions in this international application, as follows:

1. Claims: 1-27

Wale, retaining wall system, tieback rod

1.1. Claims: 1-5,6-7

A retaining wall wale

1.2. Claims: 8-23

A retaining wall system

1.3. Claims: 24-27

A tieback rod

Please note that all inventions mentioned under item 1, although not necessarily linked by a common inventive concept, could be searched without effort justifying an additional fee.

INTERNATIONAL SEARCH REPORT

International application No.
PCT/US 03/21876

Box I Observations where certain claims were found unsearchable (Continuation of item 1 of first sheet)

This International Search Report has not been established in respect of certain claims under Article 17(2)(a) for the following reasons:

1. ☐ Claims Nos.:
because they relate to subject matter not required to be searched by this Authority, namely:
2. ☐ Claims Nos.:
because they relate to parts of the International Application that do not comply with the prescribed requirements to such an extent that no meaningful International Search can be carried out, specifically:
3. ☐ Claims Nos.:
because they are dependent claims and are not drafted in accordance with the second and third sentences of Rule 6.4(a).

Box II Observations where unity of invention is lacking (Continuation of item 2 of first sheet)

This International Searching Authority found multiple inventions in this international application, as follows:

see additional sheet

1. ☐ As all required additional search fees were timely paid by the applicant, this International Search Report covers all searchable claims.
2. ☒ As all searchable claims could be searched without effort justifying an additional fee, this Authority did not invite payment of any additional fee.
3. ☐ As only some of the required additional search fees were timely paid by the applicant, this International Search Report covers only those claims for which fees were paid, specifically claims Nos.:
4. ☐ No required additional search fees were timely paid by the applicant. Consequently, this International Search Report is restricted to the invention first mentioned in the claims; it is covered by claims Nos.:

Remark on Protest

- ☐ The additional search fees were accompanied by the applicant's protest.
- ☐ No protest accompanied the payment of additional search fees.

INTERNATIONAL SEARCH REPORT

Information on patent family members

International Application No

PCT/US 03/21876

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
US 5285612	A	15-02-1994	US 5024036 A	18-06-1991
			AU 7797691 A	07-01-1992
			WO 9119871 A1	26-12-1991
			US 5749198 A	12-05-1998
			US 5597629 A	28-01-1997
			US 5222344 A	29-06-1993
			US 5197818 A	30-03-1993
			US 5247774 A	28-09-1993
			US 5795424 A	18-08-1998

GB 2278902	A	14-12-1994	NONE	

DE 3145153	A	30-06-1983	DE 3145153 A1	30-06-1983

US 3739588	A	19-06-1973	NONE	

US 4690588	A	01-09-1987	US 4674921 A	23-06-1987

US 5584610	A	17-12-1996	NONE	

GB 2356884	A	06-06-2001	AU 1540801 A	12-06-2001
			BR 0016116 A	20-08-2002
			EP 1240392 A1	18-09-2002
			WO 0140582 A1	07-06-2001
			US 2003099518 A1	29-05-2003

Pultruded anchoring bar of curable synthetic resin

Patent number: DE3145153
Publication date: 1983-06-30
Inventor:
Applicant: ROECHLING HAREN KG (DE)
Classification:
- **international:** E21D21/00; B29D3/02; E02D5/80
- **european:** E02D5/80, E21D21/00B, E21D21/00M, B29C59/02B, B29C70/52C
Application number: DE19813145153 19811113
Priority number(s): DE19813145153 19811113

Abstract of DE3145153

The pultruded anchoring bar of curable synthetic resin, embedded in which are reinforcing fibres, in particular glass fibres, extending over the length of the bar, has in particular, to increase its tensile and torsional strength, at least one anchor channel on its outer circumference, which channel extends over the length of the bar and penetrates merely into the synthetic resin compound of the bar, the reinforcing fibres being inwardly deflected in the region of the anchor channel and bypassing the anchor channel without intersecting it. To produce such an anchoring bar, a continuous strand of reinforcing fibres is drawn essentially continuously through a die approach and the strand, completely impregnated with synthetic resin, is shaped in the die approach to form a bar corresponding in its cross-section to that of the die approach and is cured. At the same time, a wire of metal or such like material, also continuous, is led up to the strand of reinforcing fibres before the latter runs into the die approach and is passed together with the strand through the die approach. Subsequently, the wire is removed, leaving behind in the finished bar an anchor channel corresponding to the cross-section of the said wire.

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